



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: PLANK, ET AL
Serial No.: 10/658,682
Filed: SEPTEMBER 9, 2003
For: CYCLODEXTRIN-
CONTAINING
COMPOSITIONS AND
METHODS

Examiner: LESLIE A. WONG
Group Art Unit: 1761
Docket No. 6137US
(GMI0012/US)

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MARY C. DEUTSCH

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir or Madam:

This communication is being filed with a Notice of Appeal.

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any fee is required, please charge the appropriate fee to the Kagan Binder Deposit
Account No. 50-1775 and notify us of the same.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The present claims relate to unique uses of cyclodextrin in food, which is carried out by adding the cyclodextrin to certain classes of foods in a unique format at the time of incorporation. These specific methods as embodied in the claims are summarized as follows, with critical aspects of the invention being emphasized by underlining:

In one aspect, a method of improving flavor stability in a food product that is designed to exhibit a crispy or springy characteristic, is provided by incorporating at least one cyclodextrin in the food product in an amount effective to improve flavor stability, wherein the cyclodextrin is added to the food product with no additional ingredients contained within the cyclical structure of the cyclodextrin other than fat.

In another aspect, a method for improving crispness stability of a food product is provided by adding cyclodextrin with no additional ingredients contained within the cyclical structure of the cyclodextrin other than fat.

In another aspect, a method of forming a food treatment composition is provided, comprising:

- a) providing a cyclodextrin;
- b) hydrating the cyclodextrin with water; and
- c) mixing the hydrated cyclodextrin with a fat to form a cyclodextrin/fat composition with no additional ingredients contained within the cyclical structure of the cyclodextrin other than fat.

The significance of the present invention with respect to products that are designed to exhibit a springy or crispy characteristic is discussed in the instant specification at page 2, line 24 to page 3, line 29. Provision of hydrated cyclodextrin with a fat to form a cyclodextrin/fat composition with no additional ingredients contained within the cyclical structure of the cyclodextrin other than fat is discussed at page 6, lines 1-5.

The sole remaining issue in this application is the rejection of claims 1-12, 21 and 22 under 35 U.S.C. 103(a) as being unpatentable over JP 55-34042, Lee (U.S. 5,780,089), and Prasad et al (U.S. 6,287,603).

It is respectfully submitted that the above rejection is presented only by clear error in not recognizing limitations introduced by amendment (shown in underline above) that clearly distinguish and differentiate over the prior art. The nature of the present claims limitations are such that they immediately disqualify application of the prior art, because any adaptation of the materials of the prior art to meet the claim limitations destroys the functionality of the prior art.

The references cited in the Final Office Action are markedly different from the presently claimed invention as follows:

JP 55-34042 describes the use of cyclodextrin to remove butter-like flavor and to improve meltability of ice cream by adding cyclodextrin to butter or butter oil. Changing the nature of the added cyclodextrin to not contain encapsulated butter flavor (as required by the instant claims) would destroy the functionality of this reference. Additionally, the addition of encapsulated butter flavor as taught in the reference is designed to improve meltability of ice cream, and changing this food product to a springy or crispy food product destroys the function of the reference.

Lee (U.S. 5,780,089) describes a flavor composition wherein, in one example, cyclodextrin is used to encapsulate a pyrolyzed oleic acid flavor. Because the very function of the reference requires that the cyclodextrin be added to the food with an encapsulated flavorant, to remove this flavorant destroys the functionality of the reference.

Prasad et al (U.S. 6,287,603) describes preparing cyclodextrin inclusion complexes, wherein a solids content increasing agent is the active agent that is contained within the cyclodextrin. The active agent of the inclusion complex is provided to thicken soups and drinks (see column 2, lines 46-48), which is very different from improving crispness stability as currently claimed in independent claim 6. Because the very

function of the reference requires that the cyclodextrin be added to a liquid food with an solids content increasing agent included within the cyclodextrin, to change the product to a springy or crispy product is completely foreign to the teaching of this reference.

Further, to remove the included solids content increasing agent to provide a cyclodextrin with no additional ingredients contained within the cyclical structure of the cyclodextrin other than fat as required by the present claims destroys the functionality of the reference.

It is respectfully submitted that the above references as a matter of law cannot form the basis for a rejection of the invention as claimed, because the revisions required to each of the disclosed systems to provide a method that corresponds to the present claims would destroy the functionality of each of the references.

The above references therefore cannot alone or in combination form the basis of an assertion that the present claims are obvious.

CONCLUSION

It is respectfully submitted that the basis of the outstanding rejection on the record requires revision of the references in a manner that destroys their functionality. Because this basis of rejection is clearly in error, a favorable decision by the Conference Panel is appropriate in this case and is hereby requested. In the event that a phone conference between any member of the Conference Panel and the Applicants' undersigned attorney would help resolve any remaining issues in the application, the Examiner is invited to contact the attorney at (651) 275-9811.

Dated: June 29, 2007

Respectfully submitted,

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